

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-4077

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LUC AVRIL and MARIE TELICIA AVRIL)

Petitioners)

v.)

IMMIGRATION AND NATURALIZATION
SERVICE)

NO. 77-4077

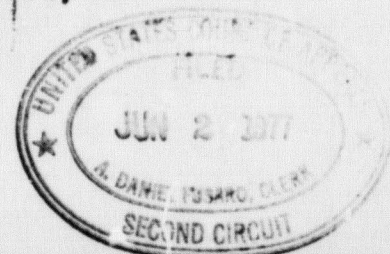
PETITION FOR JUDICIAL
REVIEW OF ADMINISTRATIVE
AGENCY ACTION

MAY 27, 1977

APPENDIX

B
P/S

VICTOR M. FERRANTE
285 Golden Hill Street
Bridgeport, Connecticut 06604



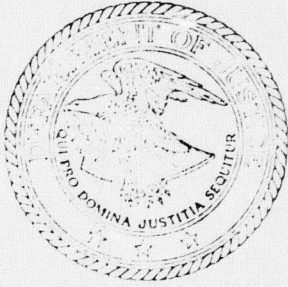
PAGINATION AS IN ORIGINAL COPY

PARTS OF THE RECORD

Record

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United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

OCT 23 1976

Files: A18 103 792 - Hartford
A18 105 504

In re: LUC AVRIL
MARIE TELICIA AVRIL

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: John A. Arcudi, Esquire
285 Golden Hill Street
Bridgeport, CT 06604

CHARGE:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251
(a)(2)) - Nonimmigrant visitors -
remained longer than permitted

APPLICATION: Suspension of deportation under section 244(a)(1) of
the Immigration and Nationality Act

The record relates to a husband and wife, who entered the United States on May 12, 1968 as nonimmigrant visitors authorized to remain until May 19, 1968. Deportability has been conceded and we find that deportability has been established by evidence that is clear, convincing and unequivocal.

On June 2, 1975, we dismissed the respondents' appeal from an order of an immigration judge finding the respondents deportable as overstays, denying their application for withholding of deportation under the provisions of section 243(h) of the Immigration and Nationality Act, and granting them voluntary departure.

A18 103 792
A18 105 504

The respondents have now submitted Form I-256A (Application for Suspension of Deportation), which will be considered as a motion to reopen the proceedings. The respondents have not submitted any evidence in support of their applications. The mere showing that the respondents have achieved the minimum statutory period of continuous physical presence does not ordinarily, without more, establish the statutory prerequisite sufficient to warrant reopening for a plenary hearing, Matter of Sipus, Interim Decision 2172 (BIA 1972). We adhere to the view that reopening for the purpose of a suspension application is not warranted. Accordingly, the following order will be entered.

ORDER: The motion to reopen for the purpose of suspension of deportation is denied.

David L. Mickelson

Chairman

File No. A

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

(PLEASE READ ADVICE AND INSTRUCTIONS BEFORE FILLING IN FORM)

FEE STAMP

- (1) I, the undersigned, hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. I believe that I am eligible for suspension of deportation because such deportation would result in extreme hardship to myself and/or to my Myself (Husband, wife, father, mother, child, children)

who is/are ☐ citizen(s) ☐ lawful permanent resident(s) of the United States; and I have been physically present in the United States without any absence since _____

(2a) My present true name is: (First, Middle, Last) LUC AVRIL				(2b) My name given at birth was:			
(3) I have been known by the additional names: none		My sex is Male	(Height) 5'5"	(Color of eyes) black	(Color of hair) black	(Complexion) dark	
(4) I was born at (Place and country) Jacmel, Haiti		on (Month) (Day) (Year) 7/4/33		My nationality is (Country of which citizen or subject) Haitian			
(5) I now reside at (Apt. number and/or in care of) 36 Chestnut Woods, P.R. #3,		(Number and street) West Redding, Connecticut		(City or town) 06896		(State) 06896	

(6) I first entered the United States under the name of (First) LUC (Middle) AVRIL (Last) AVRIL		on (Month) (Day) (Year) 5/12/68	At (seaport, airport, or land border port) Miami, Florida
Name of vessel or other means of conveyance by air		I was admitted as a (Insert visitor, crewman, transient, student, permanent resident, or other) as a visitor	
For a period of time to expire (Insert date of period for which admitted) May 19, 1968		My last extension of stay in the United States expired on (date)	

If not inspected or if entry occurred at other than a regular port, describe the circumstances as accurately as possible

I was inspected

Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates (If you have never departed from the United States since your original date of entry, insert "no departures.")

DEPARTED		RETURNED		INSPECTED AND ADMITTED (Answer Yes or No)
PORT	DATE (Month-Day-Year)	PORT	DATE (Month-Day-Year)	
No departures				

- (7) During the last 10 years, I have been in the United States as listed below: (If less than 10 years, set forth the information for the period I have been in the United States.) List present address FIRST, and work back.

STREET AND NUMBER - CITY OR TOWN - STATE (Include number of hotel room, furnished room or apartment in present address)	FROM -		TO -	
	Month	Year	Month	Year
Mrs. Elmo Roper, 36 Chestnut Woods P.R. #3, West Redding, Conn.	11/22	1969	Present	
995 -6th Avenue, Brooklyn, N.Y.		1968		196
111 -6th Avenue, Brooklyn, N.Y.				

(Use a separate sheet for additional entries.)

- (8) During my residence at the _____ in the United States named above I was employed by the following-named persons or firms. (Begin with present employment and proceed backwards. Any periods of unemployment or school attendance should be specified)

Full Name of Employer	Address of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From—		To—	
				Month	Year	Month	Year
Mrs. Elmo Roper	36 Chestnut Woods, R.R.#3 W. Redding, Conn.	70.00	Room and board	Nov.	69	present	

(Use a separate sheet for additional entries.)

- (9) If self employed, describe nature of business, name under which business is conducted, its address and net income derived therefrom:

Not Applicable

(10) I ☒ AM MARRIED ☐ AM NOT	If married, the name of my spouse is MARIE TELICIA	We were married on (Month) (Day) (Year) 1/31/59	at (City or town) (State or country) Port Au Prince, Haiti
She or he was born at (City or town) (State or country) Jacmel, Haiti		on (Month) (Day) (Year) 7/13/30	and is a citizen of (Country) Haiti
(11) (If your spouse is other than a native born United States citizen, answer the following.) She or he arrived in the United States at (City or town) Miami, Florida		on (Month) (Day) (Year) 5/12/68	☐ was admitted for permanent residence ☒ was not
was naturalized on (Month) (Day) (Year)		(Place naturalized)	

- (12) I ☐ have ☒ have not been previously married. (If previously married, give facts relative to name of each prior spouse, and manner, date, and place of termination of each prior marriage)

- (13) My present spouse ☐ has ☒ has not been previously married. (If spouse previously married, give facts relative to name of each prior spouse and manner, date, and place of termination of each prior marriage)

- (14) My spouse ☒ is ☐ is not employed. If employed, give salary and name and address of place of employment

- (15) The assets of myself (and my spouse), not including clothing and household necessities, are: Self (or jointly owned with spouse)

Cash, Stocks and Bonds.....	\$ 19,000.00	Cash, Stocks and Bonds.....	\$
Real Estate.....	\$	Real Estate.....	\$
Other (Describe).....	\$	Other (Describe).....	\$
Total.....	\$ 19,000.00	(jointly owned) Total.....	\$

- (16) I have no children. Give information requested in each column:

NAME	AGE	PLACE OF BIRTH	NOW RESIDING AT—	CITIZEN OF	LAWFUL PERMANENT RESIDENT OF U.S.

The names, assets, and earnings of my children in the United States who have separate incomes are:

☐ have ☒ have not after entry into the United States acquired the status of an exchange alien.
 (18) I ☒ have ☐ have not submitted yearly address reports as required by the amendment to the Alien Registration Act effective September 1950, and the Immigration and Nationality Act.

(19) I ☐ have ☒ have not been the recipient of public or private relief or assistance. If you have, give full details including date, place, and amount received.

(20) If you have served in the Armed Forces of the United States, state branch (Army, Navy, & service number, etc.) Not Applicable
 Date and place of entry on duty Not Applicable Date of discharge Not Applicable
 Type of discharge (honorable, dishonorable, etc.) Not Applicable I served in active duty state Not Applicable

(21) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft Laws? Yes ☐ No ☒
 If "Yes," give date, Selective Service number, local draft board number and your last draft classification.

Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes ☐ No ☒

(22) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes ☐ No ☒

(23) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted in the military or naval forces of the United States? Yes ☐ No ☒

(24) List membership, past or present, in all organizations, societies, clubs, unions, and associations, whether in the United States or in any other country, and the periods and places of such membership. Include membership in any Communist Party or organization or in any subsidiary, branch, affiliate, or subdivision of any such party or organization.

None

(25) I ☐ have ☒ have never (either in the United States or any other country) been arrested, summoned into court as a defendant, confined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public ordinance.

If answer is in the affirmative in any particular, give complete information in the space immediately following.

(Use a separate sheet for additional entries.)

(26) I can return to my country of ☐ Birth ☐ Nationality ☐ Last Residence without fear of persecution. If unable to return

(Check the appropriate block or blocks)

of these countries, give reasons I cannot return for fear of persecution.

(27) I ☒ would ☐ would not be able to arrange a trip outside the United States to obtain an immigrant visa. If not, explain.

(28) Give the requested information about your parents, brothers, and sisters. As to residence, show street address, city, and state if in the United States, otherwise show only country.

NAME	RELATIONSHIP TO ME	NOW RESIDING AT	BIRTHPLACE	CITIZEN OF	LAST PERMANENT RESIDENT
Solve Avril	Father	Haiti	Haiti	Haiti	No
Lisia Jean					
Phillipe	Mother	Haiti	Haiti	Haiti	No
Daniela					
DuPuis	Sister	Haiti	Haiti	Haiti	No
Felix					
DuPuis	Brother	Haiti	Haiti	Haiti	No
Daniel					
DuPuis	Brother	Haiti	Haiti	Haiti	No
Marcel					
Daman	Brother	Nassau	Haiti	Haiti	No

IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 29 TO 32 MUST BE ANSWERED.

(29) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country Not Applicable

(30) My father ☐ is ☐ is not employed. If employed, give salary and place of employment

Not Applicable

(31) My mother ☐ is ☐ is not employed. If employed, give salary and place of employment

Not Applicable

(32) The assets of my parents (not including clothing and household necessities) are Not Applicable

Assets of father consist of the following:

Cash, Stocks and Bonds \$
Real Estate \$
Other (Describe) \$
Total \$

Assets of mother consist of the following

Cash, Stocks and Bonds \$
Real Estate \$
Other (Describe) \$
Total \$

(33) The following certificates or other documents are attached hereto as a part of this application: (Refer to instruction 2 for documents which must be attached.)

Nature of Document

Letter from Dr. N. F. Boas

Re: Health of Mrs. Roper

Letter from Dr. R. P. Fornshell

Re: Herniated lumbar disc

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE AN IMMIGRATION JUDGE)

I do swear (affirm) that the contents of the above application, with corrections numbered () to (), and including the documents attached hereto, are true to the best of my knowledge, and that this application is now signed by me with my full, true name: So Help Me God

(Complete and true signature of applicant or parent or guardian)

Subscribed and sworn to before me by the above named applicant at
this _____ day of _____, 19____

Immigration Judge

(4)

NORMAN F. BOAS, M.D.
FACULTY OF MEDICINE
UNIVERSITY OF CALIFORNIA
SCHOOL OF MEDICINE
WALTER C. CUMMINGS 68837
TELEPHONE 742-1588

June 25, 1975

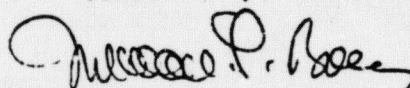
To whom it may concern:

This is to advise that Mrs. Dorothy Roper has been a patient of mine for some time. I have treated her for rather severe painful skeletal problems, including a chronic bursitis of her shoulder, severe bunions deformities with metatarsal calluses which make walking extremely difficult, as well as a very painful disorder of her knees.

I understand that Luc and Telecia Avril have been working for Mrs. Roper for some period of time at her home and on her property. Because of her age and infirmities, Mrs. Roper is unable to completely take care of herself, and I consider it essential that she have continued help at home. In view of the fact that Mr. and Mrs. Avril have rendered such competent and faithful care, I would strongly urge that consideration be given to perpetuating this relationship and that effort be directed toward keeping the Avrils in this country.

Thank you for your cooperation.

Yours truly,



Norman F. Boas, M.D.

NFB:bbf

DANBURY ORTHOPEDIC ASSOCIATES

WILLIAM A. SINTON, M.D.
ROBERT P. FORNSHELL, M.D.
FRANCIS P. SAUNDERS, M.D.
THOMAS M. MALLOY, M.D.
ROGER J. LAGRATTA, M.D.

ORTHOPEDIC SURGERY

65 OSBORNE STREET
DANBURY, CONN. 06810
TELEPHONE 203-743-9207

March 21, 1975

John A. Arcudi Law Offices
285 Golden Hill Street
Bridgeport; Conn. 06604

Re:

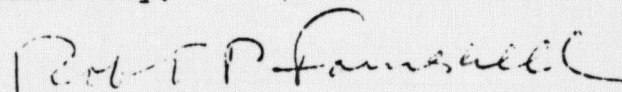
Luc Avril

Dear Mr. Arcudi:

Mr. Avril has been under my care since 11/25/74, for a right lumbar radiculitis secondary to a herniated intervertebral lumbar disc. He has continued to have some symptoms despite limitation of his activity and he may subsequently require lumbar myelography and lumbar disc surgery.

If at all possible, I feel Mr. Avril should remain in this country under medical observation for at least another six months to a year.

Sincerely,



Robert P. Fornshell, M.D.

FPS:bz

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

900 Asylum Avenue, Fourth Floor
Hartford, Connecticut 06105

File No. A18 103 792 (SIU)

Mr. Luc AVRIL
36 Chestnut Woods, R.R. #3
West Redding, Conn. 06896

Date: June 15, 1976

Dear Sir:

Reference is made to the proceedings presently pending in your case.

Your hearing has been rescheduled. You are requested to appear before an Immigration Judge at the place, date, and hour shown below.

Very truly yours,



JAMES E. SMITH
District Director

Place of hearing 900 Asylum Avenue, Fourth Floor

Hartford, Connecticut 06105

Date and hour of hearing Monday, August 23, 1976 at 11:00 a.m.

NOTE: You may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. If you wish to be so represented, your attorney or representative should appear with you at the hearing.

cc: Victor M. Ferrante, Esq., 285 Golden Hill St., Bridgeport, Conn. 06604.
Certified Mail
Return Receipt Requested

Form I-293
(Rev. 11-15-73)N

GPO 869-084

7-24
UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
900 Asylum Avenue, Fourth Floor
Hartford, Connecticut 06105

File No. A18 103 792 (SIU)

Mr. Luc AVRIL
36 Chestnut Woods, R.R. #3
West Redding, Conn. 06896

Date: July 29, 1976

AUG 2 1976

Dear Sir:

Reference is made to the proceedings presently pending in your case.

Your hearing has been rescheduled. You are requested to appear before an Immigration Judge at the place, date, and hour shown below.

Very truly yours,

James E. Smith
JAMES E. SMITH
District Director

Place of hearing 900 Asylum Avenue, 4th floor
Hartford, Connecticut 06105
Date and hour of hearing Wednesday, September 15, 1976 at 10:00 a.m.

NOTE: You may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Immigration and Naturalization Service. If you wish to be so represented, your attorney or representative should appear with you at the hearing.

NOTE: PLEASE DISREGARD YOUR NOTICE OF HEARING DATED JUNE 15, 1976.

cc: Victor M. Ferrante, Esq., 285 Golden Hill St., Bridgeport, Conn.

Certified Mail
Form 1-293

(Rev. 11-15-73)N

Return Receipt Requested

GPO 869-084

September 10, 1976

Honorable Eugene C. Cassidy
Immigration Law Judge
U. S. Department of Justice
Immigration & Naturalization Service
900 Asylum Avenue
Hartford, Connecticut 06105

Re: AVRIL, Luc, A18 105 504
AVRIL, Marie Tellicia, A19 103 792

Dear Judge Cassidy:

I tried calling you several times this week in Boston to personally request a continuance in this matter. I realize that these types of hearings are scheduled several weeks in advance; however, I was informed only last week that I am ordered to commence the re-trial of State of Connecticut v Murray R. Gold in the Superior Court, Judicial District of Waterbury. You may know that this is a murder prosecution which may require my being on trial continuously for at least one month.

In light of these circumstances, I would appreciate your continuing the hearing for the Avrils for approximately six weeks.

Thank you.

Very truly yours,

VICTOR M. FERRANTE

VMP:ims

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.		1. The following service is requested (check one): ☐ Show to whom and date delivered..... 15¢ ☐ Show to whom, date, & address of delivery..... 35¢ ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢ ☐ RESTRICTED DELIVERY. Show to whom, date, & address of delivery 85¢		2. ARTICLE ADDRESSED TO: Eugene C. Cassidy Hartford, Conn. JNS		3. ARTICLE DESCRIPTION: JNS		REGISTERED NO. 661757 CERTIFIED NO. 661757 INSURED NO.		4. SIGNATURE: I have received the article described above. SIGNATURE ☐ Addressee ☐ Authorized agent 50 m. C. Cassidy DATE OF DELIVERY 9/13/76 POSTMARK		5. ADDRESS (Complete only if requested)		6. UNABLE TO DELIVER, BECAUSE: JNS		7. CLERK'S INITIALS	
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PS Form 3811, Jan. 1975

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED